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S. 756

To expand United States exports of goods and services by requiring the development of objective criteria to achieve market access in foreign countries, to provide the President with reciprocal trade authority, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 3 (legislative day, MAY 1), 1995

Mr. ROCKEFELLER introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To expand United States exports of goods and services by requiring the development of objective criteria to achieve market access in foreign countries, to provide the President with reciprocal trade authority, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Open Markets and
5 Fair Trade Act of 1995”.

1 **SEC. 2. REPORTS ON MARKET ACCESS.**

2 (a) ANNUAL REPORTS.—Not later than 90 days after
3 the date of the enactment of this Act, and annually there-
4 after, the Secretary shall submit to the Congress a report
5 with respect to those countries selected by the Secretary
6 in which goods or services produced or originating in the
7 United States, that would otherwise be competitive in
8 those countries, do not have market access. Each report
9 shall contain the following with respect to each such
10 country:

11 (1) ASSESSMENT OF POTENTIAL MARKET AC-
12 CESS.—An assessment of the opportunities that
13 would, but for the lack of market access, be available
14 in the market in that country, for goods and services
15 produced or originating in the United States in
16 those sectors selected by the Secretary. In making
17 such assessment, the Secretary shall consider the
18 competitive position of such goods and services in
19 similarly developed markets in other countries. Such
20 assessment shall specify the time periods within
21 which such market access opportunities should rea-
22 sonably be expected to be obtained.

23 (2) CRITERIA FOR MEASURING MARKET AC-
24 CESS.—Objective criteria for measuring the extent to
25 which those market access opportunities described in
26 paragraph (1) have been obtained. The development

1 of such objective criteria may include the use of in-
2 terim objective criteria to measure results on a peri-
3 odic basis, as appropriate.

4 (3) COMPLIANCE WITH TRADE AGREEMENTS.—
5 An assessment of whether, and to what extent, the
6 country concerned has materially complied with—

7 (A) agreements and understandings
8 reached between the United States and that
9 country pursuant to section 3, and

10 (B) existing trade agreements between the
11 United States and that country.

12 Such assessment shall include specific information
13 on the extent to which United States suppliers have
14 achieved additional access to the market in the coun-
15 try concerned and the extent to which that country
16 has complied with other commitments under such
17 agreements and understandings.

18 (b) SELECTION OF COUNTRIES AND SECTORS.—

19 (1) IN GENERAL.—In selecting countries and
20 sectors that are to be the subject of a report under
21 subsection (a), the Secretary shall give priority to—

22 (A) any country with which the United
23 States has a trade deficit if access to the mar-
24 kets in that country is likely to have significant

1 potential to increase exports of United States
2 goods and services; and

3 (B) any country, and sectors therein, in
4 which access to the markets will result in sig-
5 nificant employment benefits for producers of
6 United States goods and services.

7 The Secretary shall also give priority to sectors
8 which represent critical technologies, including those
9 identified by the National Critical Technologies
10 Panel under section 603 of the National Science and
11 Technology Policy, Organization, and Priorities Act
12 of 1976 (42 U.S.C. 6683).

13 (2) FIRST REPORT.—The first report submitted
14 under subsection (a) shall include those countries
15 with which the United States has a substantial por-
16 tion of its trade deficit.

17 (3) TRADE SURPLUS COUNTRIES.—The Sec-
18 retary may include in reports after the first report
19 such countries as the Secretary considers appro-
20 priate with which the United States has a trade sur-
21 plus but which are otherwise described in subsection
22 (a) and paragraph (1) of this subsection.

23 (c) OTHER SECTORS.—The Secretary shall include
24 an assessment under subsection (a) of any country or sec-
25 tor for which the Trade Representative requests such as-

1 sessment be made. In preparing any such request, the
2 Trade Representative shall give priority to those barriers
3 identified in the reports required by section 181(b) of the
4 Trade Act of 1974 (19 U.S.C. 2241(b)).

5 (d) INFORMATION ON ACCESS BY FOREIGN SUPPLI-
6 ERS.—The Secretary shall consult with the governments
7 of foreign countries concerning access to the markets of
8 any other country of goods and services produced or origi-
9 nating in those countries. At the request of the govern-
10 ment of any such country so consulted, the Secretary may
11 include in the reports required by subsection (a) informa-
12 tion, with respect to that country, on such access.

13 **SEC. 3. NEGOTIATIONS TO ACHIEVE MARKET ACCESS.**

14 (a) NEGOTIATING AUTHORITY.—The President is au-
15 thorized to enter into agreements or other understandings
16 with the government of any country for the purpose of
17 obtaining the market access opportunities described in the
18 reports of the Secretary under section 2.

19 (b) DETERMINATION OF PRIORITY OF NEGOTIA-
20 TIONS.—Upon the submission by the Secretary of each re-
21 port under section 2, the Trade Representative shall deter-
22 mine—

23 (1) for which countries and sectors identified in
24 the report the Trade Representative will pursue ne-
25 gotiations, during the 6-month period following sub-

1 mission of the report, for the purpose of concluding
2 agreements or other understandings described in
3 subsection (a), and the timeframe for pursuing nego-
4 tiations on any other country or sector identified in
5 the report; and

6 (2) for which countries and sectors identified in
7 any previous report of the Secretary under section 2
8 the Trade Representative will pursue negotiations,
9 during the 6-month period described in paragraph
10 (1), in cases in which—

11 (A) negotiations were not previously pur-
12 sued by the Trade Representative, or

13 (B) negotiations that were pursued by the
14 Trade Representative did not result in the con-
15 clusion of an agreement or understanding de-
16 scribed in subsection (a) during the preceding
17 6-month period, but are expected to result in
18 such an agreement or understanding during the
19 6-month period described in paragraph (1).

20 For purposes of this Act, negotiations by the Trade Rep-
21 resentative with respect to a particular sector shall be for
22 a period of not more than 12 months.

23 (c) SEMIANNUAL REPORTS.—At the end of the 6-
24 month period beginning on the date on which the Sec-
25 retary's first report is submitted under section 2(a), and

1 every 6 months thereafter, the Trade Representative shall
2 submit to the Congress a report containing the following:

3 (1) REPORT WHERE NEGOTIATIONS PURSUED
4 IN PREVIOUS 6-MONTH PERIOD.—With respect to
5 each country and sector on which negotiations de-
6 scribed in subsection (b) were pursued during that
7 6-month period—

8 (A) a determination of whether such nego-
9 tiations have resulted in the conclusion of an
10 agreement or understanding intended to obtain
11 the market access opportunities described in the
12 most recent applicable report of the Secretary,
13 and if not—

14 (i) whether such negotiations are con-
15 tinuing because they are expected to result
16 in such an agreement or understanding
17 during the succeeding 6-month period; or

18 (ii) whether such negotiations have
19 terminated;

20 (B) in the case of a positive determination
21 made under subparagraph (A)(i) in the preced-
22 ing report submitted under this subsection, a
23 determination of whether the continuing nego-
24 tiations have resulted in the conclusion of an

1 agreement or understanding described in sub-
2 paragraph (A) during that 6-month period.

3 (2) REPORT WHERE NEGOTIATIONS NOT PUR-
4 SUED.—With respect to each country and sector on
5 which negotiations described in subsection (b) were
6 not pursued during that 6-month period, a deter-
7 mination of when such negotiations will be pursued.

8 **SEC. 4. MONITORING OF AGREEMENTS AND UNDERSTAND-**
9 **INGS.**

10 (a) IN GENERAL.—For the purpose of making the
11 assessments required by section 2(a)(3), the Secretary
12 shall monitor the compliance with each agreement or un-
13 derstanding reached between the United States and any
14 country pursuant to section 3, and with each existing
15 trade agreement between the United States and any coun-
16 try that is the subject of a report under section 2(a). In
17 making each such assessment, the Secretary shall de-
18 scribe—

19 (1) the extent to which market access for the
20 country and sectors covered by the agreement or un-
21 derstanding has been achieved; and

22 (2) the bilateral trade relationship with that
23 country in that sector.

24 In the case of agreements or understandings reached pur-
25 suant to section 3, the description under paragraph (1)

1 shall be done on the basis of the objective criteria set forth
2 in the applicable report under section 2(a)(2).

3 (b) TREATMENT OF AGREEMENTS AND UNDER-
4 STANDINGS.—Any agreement or understanding reached
5 pursuant to negotiations conducted under this Act, and
6 each existing trade agreement between the United States
7 and a country that is the subject of a report under section
8 2(a), shall be considered to be a trade agreement for pur-
9 poses of section 301 of the Trade Act of 1974.

10 **SEC. 5. TRIGGERING OF SECTION 301 ACTIONS.**

11 (a) FAILURE TO CONCLUDE AGREEMENTS.—In any
12 case in which the Trade Representative determines under
13 section 3(c)(1) (A)(ii) or (B) that negotiations have not
14 resulted in the conclusion of an agreement or understand-
15 ing described in section 3(a), each restriction on, or bar-
16 rier or impediment to, access to the markets of the country
17 concerned that was the subject of such negotiations shall,
18 for purposes of title III of the Trade Act of 1974, be con-
19 sidered to be an act, policy, or practice determined under
20 section 304 of that Act to be an act, policy, or practice
21 that is unreasonable and discriminatory and burdens or
22 restricts United States commerce. The Trade Representa-
23 tive shall determine what action to take under section
24 301(b) of that Act in response to such act, policy, or prac-
25 tice.

1 (b) NONCOMPLIANCE WITH AGREEMENTS OR UN-
2 DERSTANDINGS.—In any case in which the Secretary de-
3 termines, in a report submitted under section 2(a), that
4 a foreign country is not in material compliance with—

5 (1) any agreement or understanding concluded
6 pursuant to negotiations conducted under section 3,
7 or

8 (2) any existing trade agreement between the
9 United States and that country,

10 the Trade Representative shall determine what action to
11 take under section 301(a) of the Trade Act of 1974. For
12 purposes of section 301 of that Act, a determination of
13 noncompliance described in the preceding sentence shall
14 be treated as a determination made under section 304 of
15 that Act.

16 **SEC. 6. EXPEDITED PROCEDURES FOR CERTAIN PRESI-**
17 **DENTIAL ACTIONS.**

18 (a) AUTHORITY FOR RECIPROCAL ACTIONS.—In any
19 case in which—

20 (1) section 5 applies,

21 (2) the President determines that reciprocal ac-
22 tion should be taken by the United States in re-
23 sponse to—

1 (A) a restriction, barrier, or impediment
2 referred to in section 5(a) with respect to access
3 to the market of a country, or

4 (B) noncompliance with an agreement, un-
5 derstanding, or trade agreement referred to in
6 section 5(b),

7 as the case may be,

8 (3) changes in existing law or new statutory au-
9 thority is necessary for such reciprocal action to be
10 taken, and

11 (4) the President, within 30 days (excluding
12 any day described in section 154(b) of the Trade Act
13 of 1974) after—

14 (A) the determination of the Trade Rep-
15 resentative under section 3(c)(1)(A)(ii) or (B),
16 or

17 (B) the determination of the Secretary in
18 the applicable report under section 2(a),

19 as the case may be, submits to the Congress a draft
20 of implementing legislation with respect to the
21 changes or authority described in paragraph (3),

22 then subsection (c) applies.

23 (b) DEFINITIONS.—For purposes of this section—

24 (1) the term “reciprocal action” means action
25 that is taken in direct response to a restriction on,

1 or barrier or impediment to, access to the market in
2 another country and is comparable or of equivalent
3 effect to such restriction, barrier, or impediment;
4 and

5 (2) the term “implementing legislation” means
6 a bill of either House of Congress which is intro-
7 duced as provided in subsection (c) and which con-
8 tains provisions necessary to make the changes or
9 provide the authority described in subsection (a)(3).

10 (c) PROCEDURES FOR IMPLEMENTING LEGISLA-
11 TION.—On the day on which implementing legislation is
12 submitted to the House of Representatives and the Senate
13 under subsection (a), the implementing legislation shall be
14 introduced and referred as provided in section 151(c)(1)
15 of the Trade Act of 1974 for implementing bills under
16 such section. The provisions of subsections (d), (e), (f),
17 and (g) of section 151 of such Act shall apply to imple-
18 menting legislation to the same extent as such subsections
19 apply to implementing bills.

20 (d) RULES OF HOUSE OF REPRESENTATIVES AND
21 SENATE.—This section is enacted by the Congress—

22 (1) as an exercise of the rulemaking power of
23 the House of Representatives and the Senate, re-
24 spectively, and as such is deemed a part of the rules
25 of each House, respectively, and such procedures su-

1 persede other rules only to the extent that they are
2 inconsistent with such other rules; and

3 (2) with the full recognition of the constitu-
4 tional right of either House to change the rules (so
5 far as relating to the procedures of that House) at
6 any time, in the same manner, and to the same ex-
7 tent as any other rule of that House.

8 **SEC. 7. URUGUAY ROUND AGREEMENTS NOT AFFECTED.**

9 Nothing in this Act shall be construed to violate any
10 provision of the agreements approved by the Congress in
11 section 101(a)(1) of the Uruguay Round Agreements Act
12 (19 U.S.C. 3511(a)(1)).

13 **SEC. 8. DEFINITIONS.**

14 As used in this Act:

15 (1) EXISTING TRADE AGREEMENT BETWEEN
16 THE UNITED STATES AND A COUNTRY.—An “exist-
17 ing trade agreement” between the United States and
18 another country means any trade agreement or un-
19 derstanding that was entered into between the Unit-
20 ed States and that country before the date of the en-
21 actment of this Act and is in effect on such date.
22 Such term includes, but is not limited to—

23 (A) with respect to Japan—

24 (i) the Arrangement Between the Gov-
25 ernment of Japan and the Government of

1 the United States of America Concerning
2 Trade in Semiconductor Products, signed
3 in 1986;

4 (ii) the Arrangement Between the
5 Government of Japan and the Government
6 of the United States of America Concern-
7 ing Trade in Semiconductor Products,
8 signed in 1991;

9 (iii) the United States-Japan Wood
10 Products Agreement, signed on June 5,
11 1990;

12 (iv) Measures Related to Japanese
13 Public Sector Procurements of Computer
14 Products and Services, signed on January
15 10, 1992;

16 (v) the Tokyo Declaration on the
17 U.S.-Japan Global Partnership, signed on
18 January 9, 1992; and

19 (vi) the Cellular Telephone and Third-
20 Party Radio Agreement, signed in 1989;

21 (B) with respect to the European Union—

22 (i) the Agreement Concerning the Ap-
23 plication of the GATT Agreement on
24 Trade in Civil Aircraft Between the Euro-
25 pean Economic Community and the Gov-

1 ernment of the United States of America
2 on trade in large civil aircraft, with an-
3 nexes, entered into force on July 17, 1992;

4 (ii) the Agreement Concerning Pro-
5 curement Between the United States and
6 the European Union, signed April 15,
7 1994; and

8 (iii) the Memorandum of Understand-
9 ing (MOU) on Procurement Between the
10 United States and the European Union,
11 signed May 25, 1993; and

12 (C) with respect to the People's Republic
13 of China—

14 (i) the Memorandum of Understand-
15 ing (MOU) on the Protection of Intellec-
16 tual Property Rights Between the United
17 States and the People's Republic of China,
18 signed January 17, 1992;

19 (ii) the Memorandum of Understand-
20 ing (MOU) on Market Access Between the
21 United States and the People's Republic of
22 China, signed October 10, 1992;

23 (iii) the Bilateral Textile Agreement
24 Between the United States and the Peo-

1 ple's Republic of China, signed January
2 17, 1994; and

3 (iv) an exchange of letters with an at-
4 tached action plan between the United
5 States and the People's Republic of China,
6 signed February 26, 1995, relating to in-
7 tellectual property rights.

8 (2) SECRETARY.—The term “Secretary” means
9 the Secretary of Commerce.

10 (3) TRADE REPRESENTATIVE.—The term
11 “Trade Representative” means the United States
12 Trade Representative.

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